

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 05-cv-01901-PSF-MJW

**EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,**

Plaintiff,

v.

**LITHIA MOTORS, INC.,  
d/b/a LITHIA DODGE OF CHERRY CREEK, and  
LITHIA CHERRY CREEK DODGE, INC.  
d/b/a LITHIA DODGE OF CHERRY CREEK,**

Defendants.

**JAMES WITHERSPOON,**

Applicant for Intervention.

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**COMPLAINT UNDER TITLE VII  
AND JURY TRIAL DEMAND**

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Plaintiff/Intervenor James Witherspoon, by his undersigned attorneys, complains against

Defendant Lithia Motors, as follows:

**NATURE OF THE ACTION**

1. This action is brought under (a) Section 1 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (“Section 1981”), as amended by Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981A (“1991 Act”); and (b) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), as amended, *inter alia*, by the 1991 Act, (collectively the “Federal Statutes”).

2. Plaintiff has been adversely affected by unlawful employment practices taken against him by Defendant on the basis of his race, African-American, and in retaliation for his opposition to employment practices made unlawful by the Federal Statutes. As alleged with

greater particularity below, Mr. Witherspoon alleges that Defendants created and tolerated a hostile work environment based on race for James Witherspoon and for other employees at its Cherry Creek Dodge location. In addition, Defendants unlawfully retaliated against James Witherspoon because Mr. Witherspoon complained about improper race-based conduct carried out at Cherry Creek Dodge. After Mr. Witherspoon followed Defendant's internal complaint process to raise concerns of racial discrimination, his General Manager increased the harassment, making the work conditions intolerable and forcing Mr. Witherspoon from his employment. As redress for the damages he has suffered, and in the future will suffer, Plaintiff seeks legal and equitable remedies sufficient to make him whole, as more fully set forth below.

### **JURISDICTION AND VENUE**

3. This Court's federal question jurisdiction over Plaintiff's federal statutory claims is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). This action is authorized and instituted pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Section 1981, and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f) (3) and 28 U.S.C. § 1391(b). The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Colorado. Defendant maintains offices and conducts business within the State and District of Colorado.

## PARTIES

5. Plaintiff is an African American citizen of the United States and a resident of the State of Colorado, and thus is entitled to the rights and privileges protected by Section 1981 and the 1991 Act.

6. Defendant Lithia Motors, Inc. is a corporation, organized under the laws of Oregon.

7. Defendant Lithia Motors, Inc. operates the following stores in Colorado: Lithia Dodge of Cherry Creek; Lithia Colorado Chrysler Jeep; Lithia Colorado Springs Jeep Chrysler; Lithia Centennial Chrysler Jeep; Lithia Chrysler Jeep Dodge of Forth Collins; Lithia Hyundai of Forth Collins; Lithia Volkswagen of Thornton.

8. Defendant Lithia Cherry Creek Dodge, Inc. is a corporation organized under the laws of Colorado.

9. Both Defendants have continuously been doing business in the State of Colorado during all times relevant to this lawsuit, under the name Lithia Dodge of Cherry Creek at 2727 S. Havana Street, Aurora.

10. At all relevant times, each Defendant had at least 15 employees and has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

11. At all relevant times, Defendants were the employers of the employees who worked at Lithia Dodge of Cherry Creek.

12. Upon information and belief, Defendants are a joint employer of the employees who work at Lithia Dodge of Cherry Creek, or are an integrated enterprise.

13. Upon information and belief, Defendants operate as the alter ego, agent, and/or instrumentality of one another.

**ADMINISTRATIVE PROCEEDINGS**

14. More than thirty days prior to the institution of this lawsuit, James Witherspoon filed a charge of discrimination with the Equal Employment Opportunity Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

**CLAIMS**

15. As to each of the following claims for relief, paragraphs 1 through 15 above are incorporated by reference and re-alleged as if fully set forth in each separate claim.

**FIRST CLAIM FOR RELIEF AND  
SUPPORTING FACTUAL ALLEGATIONS**  
**[Discrimination Because of Race in Violation of Title VII  
of the Civil Rights Act of 1964]**

*Background*

16. Since at least 2003, Defendant Lithia Motors Inc. engaged in unlawful employment practices in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a).

17. On or about January 2003, Tim Jones transferred from Lithia Centennial Chrysler to Lithia Cherry Creek Dodge, where he became the General Manager.

18. On or about January 6, 2003, General Manager Jones terminated three minority salesmen Charles Mayes, Roosevelt Williams, and Herman Ortiz for allegedly being late to a sales meeting.

### Discrimination

19. On January 6, 2003, car salesman James Witherspoon was off work on an authorized leave of absence.
20. On or about January 13, 2003, James Witherspoon returned to work at Cherry Creek Dodge.
21. On or about January 13, 2003, General Manager Jones told Mr. Witherspoon that Witherspoon was “not going to get away with taking “B.P. Time.” When Witherspoon asked what that meant, Jones explained “Black People Time.” Jones also told Witherspoon that “B.P. Time” was the reason I fired “a bunch of you people already.”
22. During Witherspoon’s remaining tenure at Cherry Creek Dodge, General Manager Jones afforded Witherspoon less favorable treatment than he afforded Caucasian salesmen.
23. General Manager Jones screamed and yelled obscenities to Witherspoon in the presence of co-workers and displayed more hostility toward Mr. Witherspoon than he displayed to Caucasian salesmen.
24. In contrast to his treatment of Caucasian salesmen, Jones caused Witherspoon’s commissions to be unfairly split with other sales men.
25. Jones deducted an unreasonable amount of pay after wrongly accusing Witherspoon of causing damage to a car. By contrast, a white employee had no pay deducted for significant damage he had caused in an accident.
26. Jones directed that Witherspoon undergo a drug test, when there were no reasonable grounds for doing so. By contrast, Caucasian employees who were known to be intoxicated at work were not required to submit to drug testing and were not disciplined or

discharged.

27. Jones directed Witherspoon to raise the sales price by \$5,000 on a car in which an African-American customer was interested, so that the customer was unable to purchase the car.

Damages

28. As a result of the actions of defendant, Mr. Witherspoon has suffered and will continue to suffer economic damages, including but not limited to loss of wages and benefits, costs of litigation, and physical and emotional pain and suffering.

Violation of Title VII

29. The effect of the practices complained of in the paragraphs above has been to deprive James Witherspoon, of equal employment opportunities and otherwise adversely affect his status respectively as an employee, because of race, Black, or African American in violation of Sections 703(a), 42 U.S.C. § 2000e-2(a).

30. The unlawful employment practices complained of above were intentional and done with malice or with reckless indifference to the federally protected rights of James Witherspoon.

**SECOND CLAIM FOR RELIEF AND  
SUPPORTING FACTUAL ALLEGATIONS**  
**[Retaliation in Violation of Title VII  
of the Civil Rights Act of 1964]**

Background

31. Mr. Witherspoon filed an internal complaint about discrimination and harassment with Lithia Motors, Inc. corporate office on April 29, 2003.

### Retaliation

32. After Mr. Witherspoon filed his complaint, he was not advised of any investigation, or of the outcome of any investigation.

33. After Mr. Witherspoon filed his complaint, General Manager Jones' harassment of him intensified.

34. In addition, Jones yelled at and berated the personnel coordinator at Cherry Creek Dodge, for assisting Mr. Witherspoon in filing an internal charge.

35. With the continued harassment from Jones and no contact from headquarters about his internal complaint, any reasonable person would have felt the conditions had become impossible by the time Mr. Witherspoon resigned on May 16, 2003.

### Damages

36. As a result of the actions of defendant, Mr. Witherspoon has suffered and will continue to suffer economic damages, including but not limited to loss of wages and benefits, costs of litigation, and physical and emotional pain and suffering.

### Violation of Title VII

37. The effect of the practices complained of in the paragraphs above has been to deprive James Witherspoon, of equal employment opportunities and otherwise adversely affect his status respectively as an employee, because he reasonably believed he opposed practices made unlawful under Title VII in violation of Section 704 of Title VII, 42 U.S.C. § 2000e-3(a).

38. The unlawful reprisal and retaliation employment practices complained of above were intentional and done with malice or with reckless indifference to the federally protected rights of James Witherspoon.

**PRAYER FOR RELIEF**

A. In view of all of the preceding, Mr. Witherspoon respectfully requests that this Court award, adjudge and decree that:

- (1) The conduct alleged is violative of the laws of the United States and of Plaintiff's rights thereunder;
- (2) In accordance with federal law,
  - (a) Defendant pay to Plaintiff an amount – the exact total of which is presently undetermined – comprised of
    - (I) Appropriate backpay with prejudgment interest;
    - (II) The actual past and future pecuniary damages he has and/or will sustain;
    - (III) Front pay;
    - (IV) The actual nonpecuniary damages he has and/or will sustain as a result of such violations;
    - (V) Exemplary or punitive damages; and
    - (VI) Pre-judgment and post-judgment interest.
  - (b) Plaintiff be reinstated to his previous position;
  - (c) Plaintiff be awarded her costs of suit, including reasonable attorneys' fees and costs;
  - (d) Interest on the above; and

B. Plaintiff have such other, further and different relief as this Court deems just and proper.



**DEMAND FOR JURY TRIAL**

In accordance with Fed. R. Civ. P. 38(b), plaintiff/intervenor James Witherspoon hereby demands a trial by jury.

**DATED** this 5<sup>th</sup> day of December, 2005.

Respectfully submitted,

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s/ Patricia S. Bangert

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